

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

KEITH STANLEY YOUNG,)
Petitioner,)
v.) No. 4:15CV362 RWS
SCOTT LAWRENCE,)
Respondent,)

MEMORANDUM AND ORDER

This matter is before the Court on petitioner's submission of an application for writ of habeas corpus pursuant to 28 U.S.C. § 2254. The petition is successive and will be denied and dismissed.

Background

Petitioner, an inmate at Algoa Correctional Center, states that on or about December 21, 1981 he pled guilty to forcible sodomy and stealing by way of an Alford plea. The Missouri Court of Appeals affirmed petitioner's conviction on October 25, 1983. *See State v. Young*, 661 S.W.2d 637 (Mo.Ct.App. 1983). The Court of Appeals denied petitioner's motion for rehearing or transfer to the Missouri Supreme Court on November 30, 1983; the Missouri Supreme Court denied his application to transfer on January 17, 1984. *See id; see also, State v. Young*, 643 S.W.2d 28 (Mo.Ct.App.1983).

In prior pleadings before this Court, petitioner stated that the Missouri Court of Appeals denied his petition for writ of habeas corpus on May 6, 2004, and the Missouri Supreme Court denied his petition for writ of habeas corpus on May 31, 2005. Petitioner stated that he sought further habeas relief in Washington County Circuit Court.

On May 12, 2006, petitioner filed an application for writ of habeas corpus, pursuant to 28 U.S.C. § 2254 in this Court. *See Young v. Bowersox*, No. 4:06CV779 CDP (E.D.Mo. 2006). His application for writ was denied as untimely on June 12, 2006. The Eighth Circuit Court of Appeals denied petitioner’s application for certificate of appealability on August 29, 2006. *See Young v. Bowersox*, No. 06-3016 (8th Cir. 2006).¹

Discussion

Petitioner filed the instant motion on February 24, 2015. He alleges that several “new” Supreme Court cases provide him with “intervening case law” to request relief from his state court convictions and sentences. Petitioner specifically cites to the Supreme Court cases of: (1) *Martinez v. Ryan*, 132 S. Ct. 1309 (2012); (2) *Trevino v. Thaler*, 133 S.Ct. 1911 (2013); (3) *Alleyne v. United States*, 133 S.Ct. 2151 (2013); (4) *Calderon v. Thompson*, 118 S.Ct. 1489 (1998); (5) *McQuiggin v. Perkins*, 133 S.Ct. 1924 (2013). The Court will not address the substance of petitioner’s current allegations, as his petition for relief is successive and not properly before this Court.

The dismissal of a habeas petition on the ground of untimeliness is a determination “on the merits” for purposes of the successive petition rule. *See, e.g., In re Rains*, 659 F.3d 1274, 1275 (10th Cir. 2011) (per curiam); *Quezada v. Smith*, 624 F.3d 514, 519–20 (2d Cir. 2010) (“We hold that dismissal of a § 2254 petition for failure to comply with the one-year statute of limitations constitutes an adjudication on the merits that renders future petitions under § 2254 challenging the same conviction ‘second or successive’ petitions under § 2244(b).” (additional internal quotation marks omitted)). Petitioner’s prior application for writ of habeas corpus

¹ Petitioner has since filed two petitions for writs of habeas corpus pursuant to 28 U.S.C. § 2254 relating to revocations of his probation. *See Young v. Pash*, No. 4:13CV1880 RWS, (E.D.Mo.2014); *Young v. St. Louis Community Release Center*, No. 4:14CV1596 HEA (E.D.Mo. 2014).

brought before this Court in 2006 was dismissed as untimely. As a result, the instant motion is successive.

Under 28 U.S.C. § 2244(a) and § 2255(h) district courts may not entertain a second or successive application for writ of habeas corpus unless it has first been certified by the Court of Appeals. The instant petition has not been certified by the Court of Appeals for the Eighth Circuit. As a result the Court may not grant the requested relief.

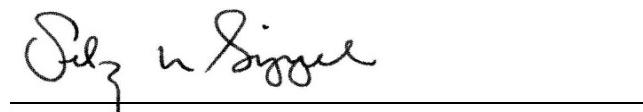
Accordingly,

IT IS HEREBY ORDERED that petitioner's motion for leave to proceed in forma pauperis [Doc. #2] is **GRANTED**.

IT IS FURTHER ORDERED that petitioner's application for writ of habeas corpus pursuant to 28 U.S.C. § 2254 is **DENIED AND DISMISSED AS SUCCESSIVE**.

IT IS FURTHER ORDERED that all additional pending motions are **DENIED AS MOOT**.

Dated this 26th day of February, 2015.



RODNEY W. SIPPEL
UNITED STATES DISTRICT JUDGE